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Jerrold Cchen

Proc. I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186961

DATE: November 9, 1976

MATTER OF: Rock, Inc.

DIGEST:

Where IFB solicits bids on four schedules with award to be made on one only, and available funding increases after bid opening and prior to award, agency may rely on additional funds in making award even if determination of schedule to award is affected.

Rock, Inc. (Rock); protests the award of a contract by the Federal Highway Administration under an invitation for bids (IFB) for crushed aggregate surfacing on existing missile base roads in Montana, a Military Traffic Management Command requirement.

Bidders responding to the solicitation were required to submit bids on each of four schedules of work: Schedule A, the surfacing of 64.22 miles; Schedule B, of 74.82 miles; Schedule C, of 86.90 miles; and Schedule D, of 97.88 miles. Each greater distance included the lesser distances. The solicitation listed the following alternatives for award in descending order of importance to the Government:

"Alternative 1 - Award of a contract for Schedule D (97.88 miles).

"Alternative 2 - Award of a contract for Schedule C (86.90 miles).

"Alternative 3 - Award of a contract for Schedule B (74.82 miles).

"Alternative 4 - Award of a contract for Schedule A (64.22 miles)."

The IFB further stated that award would be made for one schedule only, and that the purpose of the four separate schedules was " * * * to give the Government maximum flexibility in obtaining the greatest possible amount of work within the limits of the funds available. * * *" In this connection, the IFB provided an "estimated price range for the total possible amount of work that may be awarded" of between

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\$500,000 and \$1,000,000. Finally, the IFB provided that:

"* * * award of a contract, if made, will be made on a total bid basis to the lowest responsive, responsible bidder bidding on Schedule D, if funds are available for this Alternative I."

If sufficient funds were not available to award Schedule D, Schedule C, E, or A would be awarded, in that order.

Bids were opened on June 24, 1976. Rock was, apparently, the low bidder on Schedule B. Hilde Construction Co., Inc. was the low bidder on Schedule D. On July 12, the Air Force made available for the procurement \$300,000 from its Operations and Maintenance Appropriations in addition to an initial fund allotment of \$980,000. With that additional amount, sufficient funds were available to award Schedule D to Hilde Construction Co., Inc. for \$996,770, and award was made to that firm on July 12.

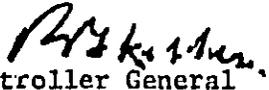
Rock alleges that it was announced at bid opening that \$850,000 was available for the procurement. Rock therefore argues that award should have been made within the limits of that amount of available funds and, on that basis, that Rock should have been awarded a contract for Schedule B. Rock contends that the agency improperly delayed award under the solicitation until it could obtain sufficient funds to award Schedule D.

Our Office has held that provisions for bidding on alternate quantities with a determination by the Government after bid opening which alternative to award is not improper. ABL General Systems, Corporation, B-185667, May 18, 1976, 76-1 CPD 332. Further, where additional funds become available after bid opening and before an award is to be made, an agency is generally entitled to rely upon those funds in making an award, even if the additional funding affects the determination of the alternative to be awarded. Praxis, Ltd., B-186157, August 10, 1976, 76-2 CPD 146; H.M. Byars Construction Company, 54 Comp. Gen. 320 (1974), 74-2 CPD 233. Accordingly, both the structure of the solicitation and the award to Hilde Construction Co., Inc. were proper. Moreover, since the solicitation clearly advised bidders of an "estimated price range" of up to \$1,000,000; that four schedules were listed for "maximum flexibility" in obtaining the greatest amount of work within available funding; and that the Government placed highest priority on awarding Schedule D, we

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cannot see how any bidder could have been prejudiced by award of Schedule D in an amount less than \$1,000,000.

In view of the above, the protest is denied. However, by letter of today, we are again recommending to the Federal Procurement Regulations Division that it consider adopting provisions for the Federal Procurement Regulations similar to those in the Armed Services Procurement Regulations relating to procurements involving additive or deductive items. See H.M. Byars Construction Company, supra.


Acting Comptroller General
of the United States